

1

2

3

4

5

6

DISTRICT COURT OF GUAM

7

TERRITORY OF GUAM

8

9

10 AMERICOPTERS, LLC,

11 Plaintiff,

12 vs.

13 FEDERAL AVIATION ADMINISTRATION,

14 Defendant.

Civil Case No. 03-00005

ORDER RE:
REPORT & RECOMMENDATION
TO SET ASIDE ENTRY OF DEFAULT

15

16 Presently before the court is the Defendant's Motion to Set Aside Default (Docket No.
17 29). The Magistrate Judge reviewed the submissions and thereafter filed his Report and
18 Recommendations on February 14, 2007 concerning the motion. Docket No. 102. In light of the
19 Magistrate Judge's ruling that permitted the plaintiff to file an amended complaint, the
20 Magistrate Judge recommended that the entry of default be set aside. *Id.* On February 15, 2007
21 the Plaintiff filed an objection to the Report and Recommendation. Docket No. 39. Docket No.
22 104.

23 The Plaintiff requests this court decline adopting the Magistrate Judge's
24 recommendation. Apparently, the defendant has not been diligent in this matter and still has not
25 met the disclosure requirements as set forth under Federal Rules of Civil Procedure 26(a)(1).
26 Under 28 U.S.C. § 636(b)(1)(C), the court may accept, reject or modify in whole or in part the
27 Magistrate Judge's recommendation, but must make a de novo determination as to any portion of
28 the recommendation where an objection has been filed.

The objections stated by the plaintiff are not well grounded. Although this court finds the defendant's dilatory behavior is less than desired, there is no indication that the Magistrate Judge's recommendation as to setting aside the entry of default was clearly erroneous or contrary to law when taking the circumstances under consideration. Admittedly, the defendant failed to file a timely answer to the complaint, however, there apparently was a clerical error on the part of the government attorney. Should there be issues concerning discovery, the plaintiff should file the appropriate motion, and not raise the issue as a basis to object to the Magistrate Judge's recommendation. Accordingly, having thoroughly considered the matter, the court hereby adopts the Magistrate Judge's Report and Recommendations in full.

10 In addition, because an amended complaint has been filed, all remaining motions pending
11 (Docket Nos. 31 and 34) are considered moot and will not be further considered by this court.

12 || So ORDERED this 6th day of March 2007.



**/s/ Hon. Frances M. Tydingco-Gatewood
Chief Judge**